

Tharan Gregory Lanier (SBN 138784)
Gregory L. Lippetz (SBN 154228)
Jane L. Froyd (SBN 220776)
JONES DAY
1755 Embarcadero Road
Palo Alto, CA 94303
Telephone: 650-739-3939
Facsimile: 650-739-3900
tglanier@jonesday.com
glippetz@jonesday.com
jfroyd@jonesday.com

Attorneys for Defendants
DIEBOLD INC. and PREMIER ELECTION
SOLUTIONS, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ARTIFEX SOFTWARE INC.,

Plaintiff,

v.

DIEBOLD INC., an Ohio corporation,
PREMIER ELECTION SOLUTIONS, INC.,
a Delaware corporation,

Defendants.

Case No. C 08-04837 SC

**NOTICE OF WITHDRAWAL OF
DEFENDANT DIEBOLD INC.'S
FRCP 12(B)(6) MOTION TO DISMISS
PLAINTIFF'S CLAIM AGAINST
DIEBOLD INC.**

On January 30, 2009, Defendant Diebold Inc. filed a motion to dismiss Plaintiff Artifex Software Inc.'s ("Plaintiff") claim for copyright infringement against Diebold Inc. Plaintiff and Defendants Diebold Inc. and Premier Election Solutions, Inc. (together "Defendants") have agreed in principle to settle this Action and are finalizing the language of a settlement agreement that fully and finally resolves all claims, disputes, and differences in this Action. In light of the pending settlement, Defendant Diebold seeks to withdraw its FRCP 12(b)(6) Motion to Dismiss Plaintiff's Claim Against Diebold, Inc. without prejudice.

1 Dated: May 26, 2009

JONES DAY

2
3 By: /s/ Gregory L. Lippetz
4 Gregory L. Lippetz

5 Attorneys for Defendant
6 DIEBOLD INC. and PREMIER ELECTION
7 SOLUTIONS, INC.
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28